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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,651	08/07/2001	Kevin P. Headings	108.0010-00000	9189
22882	7590	06/15/2004	EXAMINER	
MARTIN & FERRARO, LLP 1557 LAKE O'PINES STREET, NE HARTVILLE, OH 44632			GREENE, DANIEL L	
			ART UNIT	PAPER NUMBER
			3621	

DATE MAILED: 06/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/922,651

Applicant(s)

HEADINGS ET AL.

Examiner

Daniel L. Greene

Art Unit

3621

-- The MAILING DATE of this communication appears on the cover sheet with the corresponding address --  
 Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 August 2001.  
 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-59 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
 6) ☒ Claim(s) 1-59 is/are rejected.  
 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
 10) ☒ The drawing(s) filed on 07 August 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) ☐ All b) ☐ Some \* c) ☐ None of:  
 1. ☐ Certified copies of the priority documents have been received.  
 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
 Paper No(s)/Mail Date 6/12/02.  
 4) ☐ Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) ☐ Notice of Informal Patent Application (PTO-152)  
 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC §101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 23, and 50 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. In claims 23, and 50 the applicant claims combining assets, having content offering accessible, having business rules prescribing how the asset may be used and storing the content in a database. This process might be performed without the aid of any technology and therefore the claimed method is not within the technological arts.

All that is necessary to make a sequence of operational steps in a statutory process within 35 U.S.C. 101 is that it be in the technological arts so as to be in concordance with the Constitutional purpose to promote the progress of "useful arts" *In re Musgrave*, 431 F.2d 882 167 USPQ 280 (CCPA 1970)

A claim is limited to a practical application when the method, as claimed, produces a concrete, tangible and useful result: i.e. the method recites a step or act of producing something that is concrete, tangible and useful. See *AT&T v. Excel Communications Inc.*, 172 F3d at 1358, 50 USPQ2d at 1452.

Claims 24-40, and 51-59 are dependant on their respective independent rejected claims 23 and 50, and are rejected for at least the same reasons.

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1- 59 are rejected under 35 U.S.C. 103(a) as being unpatentable over Downs et al. U.S. Patent 6,226,618 [Downs], and further in view of Dorak, Jr. U.S. Patent 6,389,403.**

3.

As per claims 1, 23, 41, and 50:

Downs discloses:

a database for storing the media content offering; Col. 8, lines 55-67.

a file repository for storing media content associated with the media content offering; Col. 8, lines 55-67.

a server adapted to distribute media content stored in said file repository. Col. 8, lines 55-67.

a processor operable to combine media assets and metadata. Fig. 1.

create a media content offering for each selected group of the consumers;

Fig. 1B.

Downs discloses the claimed invention except for based on selected groupings of the consumers. Dorak teaches that it is known in the art to provide data based on selected groupings of the consumers. Col. 7-8, lines 1-67. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the electronic content delivery system of Downs with the distribution based on selected groupings of the consumers of Dorak, in order to provide focused and relevant data to a predisposed consumer.

As per claim 2:

Downs further discloses:

wherein said processor is operable to manage consumer-related information, further comprising a database for storing the consumer related information. Col. 10, lines 1-45.

As per claim 3:

Downs further discloses:

wherein the consumer-related information includes billing information. Col. 10, lines 1-45.

As per claims 4 and 35:

Downs further discloses:

wherein the consumer-related information includes demographical information.

Col. 10, lines 1-45.

As per claims 5 and 33:

Downs further discloses:

wherein said processor is operable to collect information associated with the use of media content selected from the media content offering by each consumer. Col. 11, lines 1-29.

As per claim 6:

Downs further discloses:

wherein the content use information includes consumer media content preferences. Col. 24, lines 5-35.

As per claim 7:

Downs further discloses:

wherein the content use information includes an amount of time each consumer uses the selected media content. Col. 52, lines 9-31.

As per claim 8:

Downs further discloses:

wherein the media content offering is programmed to expire after a fixed interval of time. Col. 59, lines 35-67.

As per claim 9:

Downs further discloses:

wherein said database is adapted to store a plurality of media content offerings to form a composite media content offering. Col. 69, lines 28-67.

As per claims 10, 34, 47, and 58:

Downs further discloses:

wherein said database is refreshed to change the composition of the composite media content offering. Col. 71, lines 9-35.

As per claims 11 and 48:

Downs further discloses:

wherein said server is a web server, further comprising a video file repository for storing video associated with the media content offering and a video server. Col. 73, lines 12-40.

As per claims 12 , 24 - 25 and 49:

Downs further discloses:

a licensing server operable to grant a license to each consumer requesting use of selected media content requiring the license upon a determination that the consumer is permitted to use selected media content. Col. 22, lines 25-65.

As per claim 13:

Downs further discloses:

wherein the license includes a decryption key program adapted to decrypt media content that is encrypted. Col. 12, lines 53-67.

As per claim 14:

Downs further discloses:

wherein said processor is operable to check an accounts database and determine whether the consumer is permitted to use the selected media content. Col. 59, lines 35-55.

As per claim 15:

Downs further discloses:



further comprising an ad manager for targeting advertisements to the consumers.

Col. 70, lines 6-35.

As per claim 16:

Downs further discloses:

wherein the groupings of consumers are arranged based on consumer-related information associated with each consumer of each group. Col. 74, lines 7-65.

As per claim 17:

Downs further discloses:

wherein the consumer-related information includes demographics of members of each selected group of consumers. Col. 45, lines 29-65.

As per claim 18:

Downs further discloses:

wherein the consumer-related information includes geographic locations of members of each selected group of consumers. Col. 45, lines 29-65.

As per claim 19:

Downs further discloses:

wherein said database is located locally to each selected group of consumers.

Col. 72, lines 5-45.

As per claim 20:

Downs further discloses:

wherein said file repository and said server are located locally to each selected group of consumers. Col. 72, lines 5-45.

As per claim 21:

Downs further discloses:

wherein the consumer-related information includes content usage by members of each selected group of consumers. Col. 72, lines 5-45.

As per claim 22:

Downs further discloses:

wherein the content usage includes viewing habits by members of each selected group of consumers. Col. 72, lines 5-45.

As per claim 26:

Downs further discloses:

further comprising the steps of accessing an account associated with the consumer and checking for permissions associated with the account, wherein said determination step is based on any of the permissions associated with the account. Col. 33-34, lines 1-67.

As per claim 27:

Downs further discloses:

further comprising the step of delivering at least one advertisement to the consumer making the request. Col. 71-72, lines 1-67.

As per claim 28:

Downs further discloses:

wherein each advertisement is delivered based on the use of media content by the consumer. Col. 71-72, lines 1-67.

As per claim 29:

Downs further discloses:

wherein each advertisement is delivered based on the demographics of the consumer. Col. 71-72, lines 1-67.

As per claim 30:

Downs further discloses:

wherein the media content offering includes an offering of video content. Col. 81, lines 3-56.

As per claim 31:

Downs further discloses:

wherein the media content offering includes an offering of music content. Col. 81, lines 3-56.

As per claims 32 and 57:

Downs further discloses:

further comprising the steps of receiving a request for media content selected from the media content offering by one of the consumers and delivering the selected media content over at least one of a DSL, satellite network, cable network, and wireless network. Col. 69. lines 1-67.

As per claim 36:

Downs further discloses:

wherein said step of refreshing is based at least in part on the viewing habits of members of each selected group of consumers. Col. 11, lines 1-29.

As per claims 37 - 38 51, and 59:

Downs further discloses:

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wherein the consumer groupings used to combine the media assets and metadata include demographics and/or geographic location of members of each selected group of consumers. Col. 72, lines 5-45.

As per claim 39:

Downs further discloses:

wherein the consumer groupings used to combine the media assets and metadata include content usage by members of each selected group of consumers. Col. 72, lines 5-45.

As per claim 40:

Downs further discloses:

wherein the content usage includes viewing habits by members of each selected group of consumers. Col. 81, lines 3-56.

As per claim 42:

Downs further discloses:

wherein the at least one business rule includes a geographic location of members of each selected group. Col. 71-72, lines 1-67.

As per claim 43:

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Downs further discloses:

wherein the at least one business rule specifies a provider to be used to deliver the media content offering to the selected group of consumers. Col. 72, lines 5-45.

As per claim 44:

Downs further discloses:

wherein the at least one business rule includes a price for association with at least one of the media assets in the media content offering. Col. 45, lines 29-65.

As per claim 45:

Downs further discloses:

wherein the at least one business rule includes-a time frame during which one or more of the media assets are available for access by the selected group of consumers. Col. 81, lines 3-56.

As per claim 46:

Downs further discloses:

wherein said database is adapted to store a plurality of media content offerings to form a composite media content offering. Col. 11, lines 1-29.

As per claim 52:

Downs further discloses:

wherein said combining step is based on a business rule that specifies a provider to be used to deliver the media content offering to the selected group of consumers.

Col. 69, lines 28-67.

As per claim 53:

Downs further discloses:

wherein said combining step is based on a business rule that includes a price for association with at least one of the media assets in the media content offering. Col. 71-

72, lines 1-67.

As per claim 54:

Downs further discloses:

wherein said combining step is based on a business rule that includes a time frame during which one or more of the media assets are available for access by the selected group of consumers. Col. 76, lines 1-35.

As per claim 55 and 56:

Downs further discloses:

wherein the media content offering includes an offering of video content and music content. Col. 9, lines 15-35.

Examiner's Note: Examiner has cited particular columns and line numbers in the references as applied to the claims below for the convenience of the applicant.

Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant, in preparing the responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel L. Greene whose telephone number is 703-306-5539. The examiner can normally be reached on M-Thur. 8am-6pm.

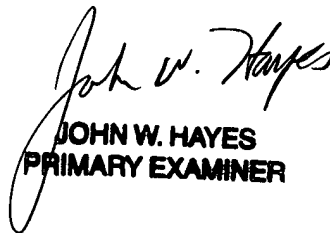
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on 703-305-9768. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

6/3/04

DLG

  
**JOHN W. HAYES**  
**PRIMARY EXAMINER**